

in lieu of any original or prior certificate, which shall be void, whether canceled or not; and

(4) *As receipts.* If the subject of sale is securities or other evidence of debt, shall be a good and valid receipt to the person holding the certificate of sale as against any person holding or claiming to hold possession of such securities or other evidences of debt; and

(5) *As authority for transfer of title to motor vehicle.* If such property consists of a motor vehicle, shall be notice, when received, to any public official charged with the registration of title to motor vehicles, of such transfer and shall be authority to such official to record the transfer on his books and records in the same manner as if the certificate of title to such motor vehicle were transferred or assigned by the party holding the certificate of title, in lieu of any original or prior certificate, which shall be null and void, whether canceled or not.

(b) *Deed to real property.* In the case of the sale of real property pursuant to 26 U.S.C. 6335:

(1) *Deed as evidence.* The deed of sale given pursuant to 26 U.S.C. 6338 shall be prima facie evidence of the facts therein stated; and

(2) *Deed as conveyance of title.* If the proceedings of the regional director (compliance as set forth have been substantially in accordance with the provisions of law, such deed shall be considered and operate as a conveyance of all the right, title, and interest the party delinquent had in and to the real property thus sold at the time the lien of the United States attached thereto.

(c) *Effect of junior encumbrances.* A certificate of sale of personal property given or a deed to real property executed pursuant to 26 U.S.C. 6338 discharges the property from all liens, encumbrances, and titles over which the lien of the United States, with respect to which the levy was made, has priority. For example, a mortgage on real property executed after a notice of a Federal tax lien has been filed is extinguished when the regional director (compliance) executes a deed to the real property to a purchaser thereof at a sale pursuant to 26 U.S.C. 6335 following the seizure of the property by the United States. The proceeds of such a

sale are distributed in accordance with priority of the liens, encumbrances, or titles. See 26 U.S.C. 6342(b) and 7426(a)(2) and §§ 70.170 and 70.207(a)(2) of this part with respect to surplus proceeds.

(26 U.S.C. 6339)

§ 70.187 Records of sale.

(a) *Requirement.* Each regional director (compliance) shall make a record of all sales under 26 U.S.C. 6335 of real property situated within that region and of redemptions of such property. The records shall set forth the tax for which any such sale was made, the dates of seizures and sale, the name of the party assessed and all proceedings in making such sale, the amount of expenses, the names of the purchasers, and the date of the deed. In the case of redemption of the property, the records shall additionally set forth the date of such redemption and of the transfer of the certificate of sale, the amount of the redemption price, and the name of the party to whom such redemption price was paid. The original record shall be retained by the Chief, Tax Processing Center.

(b) *Copy as evidence.* A copy of such record, or any part thereof, certified by the Chief, Tax Processing Center shall be evidence in any court of the truth of the facts therein stated.

(26 U.S.C. 6340)

§ 70.188 Expense of levy and sale.

The regional director (compliance) shall determine the expenses to be allowed in all cases of levy and sale. Such expenses shall include the expenses of protection and preservation of the property during the period subsequent to the levy, as well as the actual expenses incurred in connection with the sale thereof. In case real and personal property (or several tracts of real property) are sold in the aggregate, the regional director (compliance) shall properly apportion the expenses to the real property (or to each tract).

(26 U.S.C. 6341)

JUDICIAL PROCEEDINGS

Civil Action by the United States

SOURCE: Sections 70.191 through 70.193 added by T.D. ATF-301, 55 FR 47633, Nov. 14, 1990.

§ 70.191 Authorization.

(a) *In general.* No civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be commenced unless the Director, Bureau of Alcohol, Tobacco and Firearms, or designated delegate, or the Chief Counsel for the Bureau, or designated delegate, directs that the action be commenced.

(b) *Property held by banks.* The Director shall not authorize or sanction any civil action for the collection or recovery of taxes, or of any fine, penalty, or forfeiture, from any deposits held in a foreign office of a bank engaged in the banking business in the United States or a possession of the United States unless the Director believes:

(1) That the taxpayer is within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned and that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States; or

(2) That the taxpayer is not within the jurisdiction of a U.S. court at the time the civil action is authorized or sanctioned, that the bank is in possession of (or obligated with respect to) deposits of the taxpayer in an office of the bank outside the United States or a possession of the United States, and that such deposits consist, in whole or in part, of funds transferred from the United States or a possession of the United States in order to hinder or delay the collection of a tax imposed by the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7401)

§ 70.192 Action to enforce lien or to subject property to payment of tax.

(a) *Civil actions.* In any case where there has been a refusal or neglect to pay any tax (with respect to the provi-

sions of 26 U.S.C. enforced and administered by the Bureau) or to discharge any liability in respect thereof, whether or not levy has been made, the Attorney General or designated delegate at the request of the Director, Bureau of Alcohol, Tobacco and Firearms, or the Chief Counsel for the Bureau or designated delegate, may direct a civil action to be filed in any court of the United States to enforce the lien of the United States under the Internal Revenue Code with respect to such tax or liability or to subject any property, of whatever nature, of the delinquent, or in which the delinquent has any right, title or interest, to the payment of such tax or liability. In any such proceeding, at the instance of the United States, the court may appoint a receiver to enforce the lien, or, upon certification by the Director or the Chief Counsel for the Bureau during the pendency of such proceedings that it is in the public interest, may appoint a receiver with all the powers of a receiver in equity.

(b) *Bid by the United States.* If property is sold to satisfy a first lien held by the United States, the United States may bid at the sale a sum which does not exceed the amount of its lien and the expenses of the sale. See also 31 U.S.C. 3715.

(26 U.S.C. 7403)

§ 70.193 Disposition of judgments and moneys recovered.

All judgments and moneys recovered or received for taxes, costs, forfeitures, and penalties (with respect to the provisions of 26 U.S.C. enforced and administered by the Bureau) shall be paid to the Bureau as collections of taxes imposed under the provisions of 26 U.S.C. enforced and administered by the Bureau.

(26 U.S.C. 7406)

Proceedings by Taxpayers and Third Parties

SOURCE: Sections 70.202 through 70.213 added by T.D. ATF-301, 55 FR 47634, Nov. 14, 1990.